(B) CHIEF

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG).

Writ Petition No. . . 359 2004

PETITIONER : Smt. K. Thakur, aged 40 years,
Auxillary Nurse Midwife,
Sub-Health Centre,
Village - Pauwara, Tahsil Durg,
District Durg (C.G.).

VERSUS.

RESPONDENTS : 1. State of Chhattisgarh,
Through - Secretary, Public HealthFamily Welfare and Medical Education,
Govt. of Chhattisgarh, Mantralaya,
D.K.S. Bhawan, RAIPUR (CG).

2. Chief Medical and Health Officer,
District Hospital, DURG (CG.).

3. Shri R.P. Verma,
Under Secretary, Public Health, Family Welfare and Medical Education,
Govt. of C.G. Raipur.

4. Shri Sudhir Kale,
Assistant Grade-I,
Office of Under Secretary,
Public Health and Family Welfare and Medical Education, B.K.S. Bhawan,
RAIPUR (C.G.).

5. Smt. Sumeeta Ghosh,
A.N.M. Sub-Health Centre,
Village - Pauwara,
Tahsil - DURG, District DURG (CG.)

P.R. No. 343/04
Presented by Shri B.K. Tamaskar
dated 03.02.04

RECEIVED-COPY
3/2/04
Clerk to A.G. Bilaspur

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

1. Particulars of the Petitioner:
As given in the cause title.

2. Particulars of the respondents :
As given in thecause title.

3. Particulars of order(s) against which petition is filed :

Amended order No. 146/3438/2003/Seventeen/One
Govt. of Chhattisgarh, Health and Family Welfare Department, Mantralaya, D.K.S. Bhawan, RAIPUR.
Dated 05 Jan. 2004.

4. LIMITATION :
This petition is well within time.

NOTARY R.W. COMMISSION INDIA MP/133/1998

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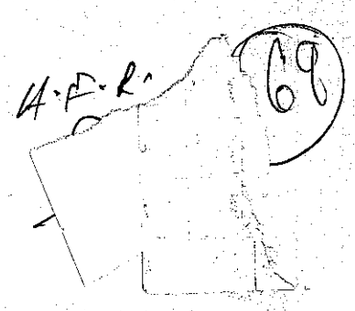


HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

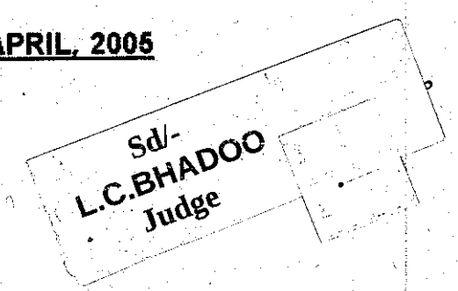
Writ Petition No.359 of 2004

Smt. K. Thakur

- Versus -

State of Chhattisgarh and four others

POST FOR ORDER ON 15TH APRIL, 2005



HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.359 of 2004

Smt. K. Thakur

- Versus -

State of Chhattisgarh and four others

Present: -

Mr. V.G. Tamaskar, Advocate:	For the petitioner.
Mr. U.N.S. Deo, Govt. Advocate:	For the State/respondents No.1 & 2.
Mr. R.M. Solapurkar, Advocate:	For respondents No.3 & 4.
Mr. Pankaj Shrivastava, Advocate:	For respondent No.5.

ORDER

(Passed on 15th April, 2005)

L.C. BHADOO, J.

1. The petitioner, who is working as Multipurpose Health Worker, has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality and propriety of the order dated 5-1-2004 (Annexure P-7) whereby the order dated 1-10-2003 (Annexure P-5) transferring the petitioner from Sub Health Centre: Chihro, Sub Division: Daundi, District: Durg to Sub Health Centre: Kolihapuri, Sector: Chandkhuri, Primary Health Centre: Nikum, District: Durg has been cancelled, and also the order dated 23rd June, 2003 (Annexure P-2), whereby the petitioner's posting at Sub Health Centre: Chihro, Sub Division: Daundi has been restored.

2. Brief facts leading to filing of this writ petition are that the petitioner is a Health Worker under the Health, Family Welfare and Medical Education Department. Vide order dated 8-1-2002 (Annexure P-1) on her own request the petitioner was transferred from Primary Health Centre: Khandsara, Sub Health Centre: Mau, District: Durg, to Sub Health Centre: Pauwara, Primary Health Centre: Nikum, District: Durg. As no post was available and respondent No.5 was already working there, therefore, vide order dated 23rd June, 2003 (Annexure P-2) the petitioner was transferred to Sub Health Centre: Chihari. However, vide order dated 1-10-2003 (Annexure P-5) the petitioner was again transferred to Nikum and since respondent No.5 was already working there and there was no post

available at Nikum, vide the impugned order dated 5-1-2004, the order dated 1-10-2003 was cancelled and that of order dated 23rd June, 2003 whereby the petitioner was posted at Chihari was restored.

3. The case of the petitioner is that this order has been passed just to accommodate respondent No.5. Since the petitioner did not satisfy the illegitimate demands made by respondents No.3 & 4, the impugned order has been passed and the petitioner has been shifted four times in a span of one and half years. The petitioner is not getting salary, therefore, the impugned order be set aside.

4. Return has been filed on behalf of the State/respondents No.1 & 2 in which it has been mentioned that the above order has been passed on the ground of administrative exigency and the petitioner was transferred on her own request from Sub Health Centre: Mau, Block: Bemetara, District: Durg to Sub Health Centre: Pauwara.

5. Return has also been filed by respondent No.5 in which it has been mentioned that when the petitioner was transferred from Mau to Pauwara vide order dated 8-1-2002 respondent No.5 was already working there under order dated 10-9-2001. In spite of the fact that respondent No.5 was working at that place, the petitioner was transferred and one Smt. Shakuntala Dewangan was also working in excess of sanctioned post in Sub Health Centre: Pauwara vide order dated 8-1-2002. Therefore, as respondent No.5 was already working there and both the petitioner and Smt. Shakuntala Dewangan were transferred, against one post three persons could not be accommodated.

6. Respondents No.3 & 4 have also filed return and they have submitted that since no post was available, therefore, the petitioner and Smt. Shakuntala Dewangan were transferred to Nikum. They have denied the allegations levelled against them.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner argued that the petitioner has been subjected to frequent transfers in order to accommodate respondent No.5 and she is not getting salary. The petitioner failed to satisfy the requirement of respondents No.3 & 4 that is why she has been transferred frequently.

9. On the other hand, learned counsel for the respondents argued that the petitioner was working at Mau and on her own request vide order dated 8-1-2002 (Annexure P-1) she was transferred to Nikum, whereas, respondent No.5 was already working there in pursuance of the order dated 10-9-2001, and there was only one post, and no other post was there, as such, the petitioner could not have been accommodated, that is why she was transferred from Nikum. Therefore, there is no question of adjustment of respondent No.5.

10. The settled law with regard to exercise of judicial review by the High Court under Article 226 of the Constitution of India in the matter of transfer of a Government employee is that the order of transfer is an incident of service, and it is for the appropriate authority to decide that who should be transferred where. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it, as has been held by the Apex Court in the matter of **Union of India and others v. S.L. Abbas** reported in **AIR 1993 SC 2444**.

11. Again in the matter of **Rajendra Roy v. Union of India and another** reported in **AIR 1993 SC 1236**, the Apex Court held that

> "It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

12. In the matter of **State of U.P. and others v. Gobardhan Lal** reported in **2004 AIR SCW 2082**, the Apex Court held that

> "it is not for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent

> to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. An officer or a servant cannot deprive or deny the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments."

The Apex Court further held that

> "The Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

13. In the matter of **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and others** reported in **2004 AIR SCW 5563**, the Apex Court held that

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer."

14. Therefore, in the light of the above settled law, we have to examine the present case as to whether the petitioner has been able to establish that she has been subjected to frequent transfers and the impugned order is a mala fide exercise of power. But on facts, I am of the considered opinion that the petitioner has failed to establish this fact. No material has been placed by the petitioner to show or establish or for drawing inference regarding the mala fides of the respondents. Therefore, the grounds raised by the petitioner are wholly untenable because, as borne out from the record, in the year 2002 the petitioner was working at Mau and on her own request she was adjusted to Nikum, but when coming to know that there is no vacant post at Nikum, thereafter, she was transferred vide order dated 23rd June, 2003 (Annexure P-2) to Chihari. However, the order dated 23-6-2003 was cancelled and vide order dated 1-10-2003 (Annexure P-5), the petitioner was again posted at Nikum. But when there was no post available at Nikum, the impugned order was passed. It is admitted position that respondent No.5 was already working prior to 2002 when the petitioner was posted and no transfer order was passed transferring respondent No.5

and there was only one post. Therefore, the petitioner could not be adjusted and as such, she has been posted under the impugned order at Nikum and Nikum is also in the same District i.e. Durg.

15. In the above facts and circumstances of the case, I am of the considered opinion that the petitioner has failed to make out a case for interference by this Court by invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India.

16. In the result, the petition fails, same is liable to be dismissed and it is hereby dismissed. In the facts and circumstances of this case, there will be no order as to costs.

Sd/-
L.C.BHADOO
Judge

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